

HEIDL RIEDEL ET AL.  
USSN 10/016,964  
REPLY TO OFFICE ACTION DATED MARCH 20, 2003  
AMENDMENT DATED September 22, 2003

CONDITIONAL PETITION FOR EXTENSION OF TIME

If entry and consideration of the amendments above requires an extension of time, Applicants respectfully request that this be considered a petition therefor. The Commissioner is authorized to charge any fee(s) due in this connection to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess, to Deposit Account No. 14-1263.

REMARKS

Applicants respectfully request reconsideration and allowance of this application in view of the amendments above and the following comments.

Claims 1-13 and 15 were rejected under 35 USC § 112, second paragraph, as being indefinite. In response to the Examiner's point (i), "IV" in claim 1 has been changed to "II." In response to the Examiner's point (ii), Applicants point out that claim 2 says "at least" while claim 3 says "at most." In response to the Examiner's point (iii), Applicants point out that claim 7 has been canceled. In response to the Examiner's point (iv), the typographical error in claim 5 has been corrected. In view of the foregoing, Applicants respectfully request that the Examiner

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reconsider and withdraw this rejection.

For the record, Applicants emphasize that although the claims were amended to overcome this rejection, and, therefore, might be argued to have been amended for a reason substantially related to patentability, a fair reading of the amended claims will reveal that the departures from the previous claims were for clarification purposes only, and that Applicants did not narrow the claims in any material respect. Therefore, Applicants submit that the amended claims are entitled to the full range of equivalents.

Claims 1-4, 11 and 13-15 were rejected under 35 USC § 102(b) as being anticipated by Bellon et al. ("Bellon"), FR 2,789,397. In response, Applicants would remind the Examiner that anticipation requires that each and every element as set forth in the claim must be found, either expressly or inherently described, in a single prior art reference, and, further, the absence in the prior art reference of even a single one of the claim elements is sufficient to negate anticipation. *In re Robertson*, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999). The Examiner concedes that the sole pertinent example of Bellon teaches a combination of  $12\% A + 22\% B + 6\% C = 40\%$ , whereas the instant claims require that the total of  $A + B + C$  is not more than 20%. Consequently, there is no anticipation.

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Claims 5-7 were rejected under 35 USC § 103(a) as being obvious over Bellon.

Claims 8-10 were rejected under 35 USC §103(a) as being obvious over Bellon in view of Synder, US 4,708,813.

Claim 12 was rejected under 35 USC § 103(a) as being obvious over Bellon in view of Saint-Leger et al. ("Saint-Leger"), US 5,939,077.

In response to all three obviousness rejections, Applicants submit that the difference between the instant claims is not obvious. As noted above, the sole pertinent example of Bellon is conceded by the Examiner to teach 40% of a combination of A + B + C, whereas the instant claims require a maximum of 20% of this same combination. Bellon says very little about the importance of the emulsifier. Consequently, a person having ordinary skill in the art is not led by Bellon alone to the present invention, and the obviousness rejection based on Bellon alone should be immediately withdrawn. Although the Examiner's reliance on *In re Aller*, 105 USPQ 233 (CCPA 1955) is noted, that case pertained to *process* claims, which are not here involved, and, moreover, addressed the optimization of known result-effective variables. See, e.g., *In re Antoine*, 195 USPQ 6 (CCPA 1977), for the proposition does not apply where the prior art does not reveal the optimized variable to be result-effective.

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The secondary references are of no help in bridging the gap between Bellon and the instant claims. Synder is relied upon only to teach the additional features of dependent claims 8-10, and Saint-Leger is relied upon only to teach the use of carbon dioxide as an expansion gas. Consequently, the combination of Bellon and these secondary references still fails to render obvious the basic features of the present invention.

In view of the foregoing, Applicants respectfully submit that the Examiner would be fully justified to reconsider and withdraw all of the prior art rejections. An early notice that these rejections have been reconsidered and withdrawn is earnestly solicited.

Applicants believe that the foregoing constitutes a bona fide response to all outstanding objections and rejections.

Applicants also believe that this application is in condition for immediate allowance. However, should any issue(s) of a minor nature remain, the Examiner is respectfully requested to telephone the undersigned at telephone number (212) 808-0700 so that the issue(s) might be promptly resolved.

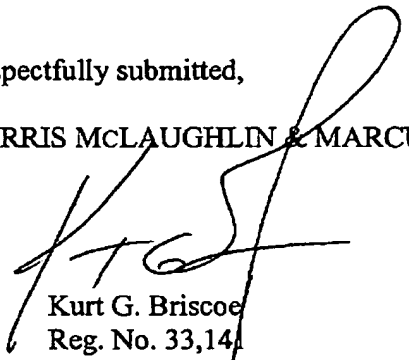
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Early and favorable action is earnestly solicited.

Respectfully submitted,

NORRIS McLAUGHLIN & MARCUS, P.A.

By

  
Kurt G. Briscoe  
Reg. No. 33,141

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220 East 42<sup>nd</sup> Street  
30<sup>th</sup> Floor  
New York, New York 10017  
Phone: (212) 808-0700  
Fax: (212) 808-0844

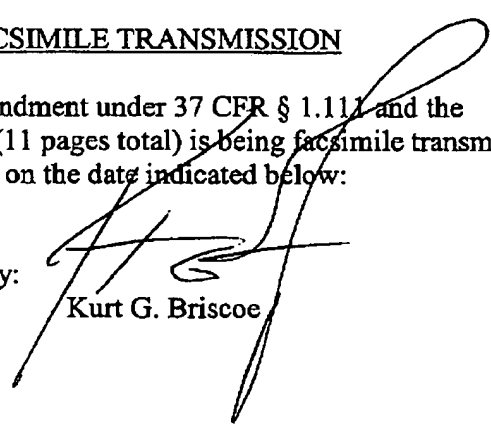
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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that the foregoing Amendment under 37 CFR § 1.111 and the accompanying Petition for Extension of Time (11 pages total) is being facsimile transmitted to the United States Patent and Trademark Office on the date indicated below:

Date: September 22, 2003

By:

  
Kurt G. Briscoe